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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEB 15 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate	)	RM-8117, RM-8030
Future Development of SMR Systems	)	RM-8029
in the 800 MHz Frequency Band	)	
	)	
Implementation of Sections 3(n)	)	GN Docket No. 93-252
and 332 of the Communications Act	)	
Regulatory Treatment of Mobile	)	
Services	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act --	)	
Competitive Bidding	)	

To: The Commission

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COMMENTS  
OF THE  
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

The Council of Independent Communication Suppliers ("CICS"), pursuant to the Federal Communications Commission's First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal.<sup>1</sup>

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<sup>1</sup> First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (FCC 95-501), PR Docket No. 93-144, GN Docket No. 93-252 and PP Docket No. 93-253, adopted December 15, 1995, released December 15, 1995, (scheduled to be published in the Federal Register dated February 16, 1996). This document is hereinafter referred to as "800 MHz Decision and Proposal."

## **I. PRELIMINARY STATEMENT**

1. CICS is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, communications engineers and consultants. CICS was formed to provide these entities a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the Private Land Mobile Radio Services. CICS is an independent market council of the Industrial Telecommunications Association, Inc. ("ITA").

## **II. COMMENTS**

Three aspects of the Commission's 800 MHz auction proposal are of particular concern to CICS's members: (1) the identification of the elements that constitute "actual relocation costs"; (2) the definition to be given to the term "comparable facilities"; and (3) the proposal to require EA licensees who benefit from relocation to share the costs of relocation on a pro rata basis. In addition, CICS is troubled by the plan for incumbent relocation negotiations adopted in the First Report and Order portion of the 800 MHz item.<sup>2</sup>

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<sup>2</sup> 800 MHz Decision and Proposal, paragraph 77.

As an overall comment, CICS desires to point out that not all of the systems licensed to use frequencies in the upper block of 200 channel pairs are SMR systems. The upper block was allocated exclusively for SMR use in 1988.<sup>3</sup> Before that time, the channels were available equally for SMR as well as trunked, non-SMR systems. As a result, a mixture of both SMR and non-SMR systems currently occupy the upper block. The 800 MHz Decision and Proposal seems to overlook this fact.<sup>4</sup> It is CICS's view that all of the relocation provisions that apply to incumbent SMR systems should apply equally to non-SMR incumbents.

#### Relocation Costs

CICS agrees that the term "actual relocation costs" should include the incumbent systems' existing equipment, towers and/or modifications, back-up power equipment, engineering costs, installation, system testing, FCC filing costs, site acquisition and civil works, zoning costs, training, disposal of old equipment, test equipment, spare equipment, project management, and site lease negotiation. CICS agrees that relocation costs should not be limited to the above cost items because, in

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<sup>3</sup> Report and Order, Docket No. 86-404, 3 FCC Rcd. 1838 (1988).

<sup>4</sup> See, e.g., paragraph 272, where the proposal states that actual relocation costs should include "SMR equipment." See also paragraph 279, which suggests that the issue of comparable facilities is limited to "comparable facilities in the 800 MHz SMR context."

individual cases, there are likely to be a variety of other costs that arise. For example, in any number of cases, it may be necessary to operate both the old and new systems for a period of time until the reliability of the new system is tested and confirmed. CICS prefers that a two-part test, similar to the criterion proposed by Louisville,<sup>5</sup> be used to determine actual relocation costs:

- Were the costs necessary to ensure that the incumbent's new facilities are comparable to its old facilities?
- Were the costs incurred within one year after the incumbent took control of the new facilities?

#### Comparable Facilities

CICS believes that the threshold definition of "comparable facilities" is facilities that are equal to or superior to the existing facilities. Accordingly, "comparable facilities" should include an equal number of channels in the 800 MHz range; the same bandwidth; a level of protection from co-channel interference that is comparable to the protection resulting from the technical criteria that served as the basis for licensing the incumbent's original system; relocation of the incumbent licensee's entire system, not merely those frequencies desired by a particular EA licensee; and the incumbent's "retuned" system providing at least the same performance as the incumbent's existing system operating at the same antenna height with the same power.

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<sup>5</sup> 800 MHz Decision and Proposal, paragraph 271.

CICS believes that the Commission must be especially careful to define the incumbent relocation program in such a way that EA licensees are required to adhere to the full intent and meaning of the channel assignment policies which governed the licensing of the incumbents' systems. To illustrate, CICS urges the Commission to mandate that EA licensees must honor the separation standards that apply in special cases, such as the 105-mile geographic separation standard applicable to systems located on specified mountaintop sites in California and Washington.<sup>6</sup> The new facilities established by retuned licensees must be assured of adequate interference protection. At a minimum, the level of interference protection that results after retuning must be comparable to the protection experienced with the existing facilities.

#### Reimbursement Rights

CICS supports the proposal to grant reimbursement rights to EA licensees who negotiate a relocation agreement that benefits other EA licensees. CICS believes that the reimbursements rights should be generally modeled after the reimbursement rights program that will apply to PCS licensees.

#### Incumbent Negotiations Plan

CICS does not believe that the negotiation phases adopted by

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<sup>6</sup> Section 90.621(b), 47 C.F.R. 90.621(b) (1995).

the Commission serve the public interest. Specifically, CICS objects to the one-year voluntary period and two-year mandatory period established for negotiations. CICS would prefer an initial voluntary negotiation period that extends for two years, followed by a one-year mandatory period.

In CICS's view, there is little purpose to be served by a two-year mandatory period. The benefit of extending the voluntary period for two years, as is the case for negotiations between PCS licensees and licensees of incumbent microwave systems, is that it affords greater flexibility and protection for those licensees who will bear the greatest impact of the relocation. A two-year voluntary period would allow incumbents at least some degree of flexibility in the timing of their relocation. This latitude would help to minimize the adverse impact on the level of service provided to existing subscribers.

**WHEREFORE, THE PREMISES CONSIDERED,** the Council of Independent Communication Suppliers urges the Federal Communications Commission to act in accordance with the views expressed herein.

Respectfully submitted,

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Date: February 15, 1996